

AMENDED IN ASSEMBLY JUNE 7, 2012

AMENDED IN SENATE MAY 8, 2012

AMENDED IN SENATE APRIL 24, 2012

**SENATE BILL**

**No. 1342**

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**Introduced by Senator Emmerson**  
*(Coauthor: Assembly Member Gorell)*

February 24, 2012

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An act to amend Section 27388 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

SB 1342, as amended, Emmerson. Counties: recording: real estate instruments.

Existing law authorizes the board of supervisors to adopt, by resolution, a fee of up to \$3 for each recording of a real estate instrument, paper, or notice required or permitted by law to be recorded, except as specified. Existing law defines the term "real estate instrument" to mean a deed of trust, an assignment of trust, a reconveyance, a request for notice, a notice of default, a substitution of trustee, a notice of trustee sale, or a notice of rescission of declaration of default. Existing law requires a district attorney in a participating county to annually submit a report to the Legislative Analyst's Office on the effectiveness of deterring, investigating, and prosecuting real estate fraud crimes funded by the recording fee, and requires the Legislative Analyst's Office to report to the Legislature on these efforts, as specified.

This bill would increase the highest fee that may be charged to \$10 and would also include in the definition of "real estate instrument" an

amended deed of trust, an abstract of judgment, an affidavit, an assignment of rents, an assignment of a lease, a construction trust deed, covenants, conditions, and restrictions (CC&Rs), a declaration of homestead, an easement, a lease, a lien, a lot line adjustment, a mechanics lien, a modification for deed of trust, a notice of completion, a quitclaim deed, a subordination agreement, a trustee's deed upon sale, and any Uniform Commercial Code amendment, assignment, continuation, statement, or termination. ~~This~~ *The* bill would repeal the specific reporting requirement from county district attorneys to the Legislative Analyst's Office and from the Legislative Analyst's Office to the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the  
2 following:  
3 (a) The current recording fee collected to fund the Real Estate  
4 ~~Prosecutions~~ *Fraud Prosecution* Trust Fund is insufficient to  
5 adequately fund real estate fraud prosecutions and needs to be  
6 increased.  
7 (b) Greater specificity is needed with regard to the types of real  
8 estate instruments to which the current recording fee may be  
9 applied.  
10 (c) In order to promote housing and home ownership  
11 opportunities, the recording fee imposed by this act should not be  
12 applied to any recordings made in connection with a sale of real  
13 property. Purchasing housing is likely the largest purchase made  
14 by Californians, and it is the intent of this act to not increase  
15 transaction costs associated with those transfers.  
16 SEC. 2. Section 27388 of the Government Code is amended  
17 to read:  
18 27388. (a) In addition to any other recording fees specified in  
19 this code, upon the adoption of a resolution by the county board  
20 of supervisors, a fee of up to ten dollars (\$10) shall be paid at the  
21 time of recording of every real estate instrument, paper, or notice  
22 required or permitted by law to be recorded within that county,  
23 except those expressly exempted from payment of recording fees.  
24 For purposes of this section, "real estate instrument" means a deed

1 of trust, an assignment of deed of trust, an amended deed of trust,  
2 an abstract of judgment, an affidavit, an assignment of rents, an  
3 assignment of a lease, a construction trust deed, covenants,  
4 conditions, and restrictions (CC&Rs), a declaration of homestead,  
5 an easement, a lease, a lien, a lot line adjustment, a mechanics lien,  
6 a modification for deed of trust, a notice of completion, a quitclaim  
7 deed, a subordination agreement, a release, a reconveyance, a  
8 request for notice, a notice of default, a substitution of trustee, a  
9 notice of trustee sale, a trustee's deed upon sale, or a notice of  
10 rescission of declaration of default, or any Uniform Commercial  
11 Code amendment, assignment, continuation, statement, or  
12 termination. "Real estate instrument" does not include any deed,  
13 instrument, or writing recorded in connection with a transfer subject  
14 to the imposition of a documentary transfer tax as defined in  
15 Section 11911 of the Revenue and Taxation Code. The fees, after  
16 deduction of any actual and necessary administrative costs incurred  
17 by the county recorder in carrying out this section, shall be paid  
18 quarterly to the county auditor or director of finance, to be placed  
19 in the Real Estate Fraud Prosecution Trust Fund. The amount  
20 deducted for administrative costs shall not exceed 10 percent of  
21 the fees paid pursuant to this section.

22 (b) Money placed in the Real Estate Fraud Prosecution Trust  
23 Fund shall be expended to fund programs to enhance the capacity  
24 of local police and prosecutors to deter, investigate, and prosecute  
25 real estate fraud crimes. After deduction of the actual and necessary  
26 administrative costs referred to in subdivision (a), 60 percent of  
27 the funds shall be distributed to district attorneys subject to review  
28 pursuant to subdivision (d), and 40 percent of the funds shall be  
29 distributed to local law enforcement agencies within the county  
30 in accordance with subdivision (c). In those counties where the  
31 investigation of real estate fraud is done exclusively by the district  
32 attorney, after deduction of the actual and necessary administrative  
33 costs referred to in subdivision (a), 100 percent of the funds shall  
34 be distributed to the district attorney, subject to review pursuant  
35 to subdivision (d). A portion of the funds may be directly allocated  
36 to the county recorder to support county recorder fraud prevention  
37 programs, including, but not limited to, the fraud prevention  
38 program provided for in Section 27297.7. Prior to establishing or  
39 increasing fees pursuant to this section, the board of supervisors  
40 may consider support for county recorder fraud prevention

1 programs. The funds so distributed shall be expended for the  
2 exclusive purpose of deterring, investigating, and prosecuting real  
3 estate fraud crimes.

4 (c) The county auditor or director of finance shall distribute  
5 funds in the Real Estate Fraud Prosecution Trust Fund to eligible  
6 law enforcement agencies within the county pursuant to subdivision  
7 (b), as determined by a Real Estate Fraud Prosecution Trust Fund  
8 Committee composed of the district attorney, the county chief  
9 administrative officer, the chief officer responsible for consumer  
10 protection within the county, and the chief law enforcement officer  
11 of one law enforcement agency receiving funding from the Real  
12 Estate Fraud Prosecution Trust Fund, the latter being selected by  
13 a majority of the other three members of the committee. The chief  
14 law enforcement officer shall be a nonvoting member of the  
15 committee and shall serve a one-year term, which may be renewed.  
16 Members may appoint representatives of their offices to serve on  
17 the committee. If a county lacks a chief officer responsible for  
18 consumer protection, the county board of supervisors may appoint  
19 an appropriate representative to serve on the committee. The  
20 committee shall establish and publish deadlines and written  
21 procedures for local law enforcement agencies within the county  
22 to apply for the use of funds and shall review applications and  
23 make determinations by majority vote as to the award of funds  
24 using the following criteria:

25 (1) Each law enforcement agency that seeks funds shall submit  
26 a written application to the committee setting forth in detail the  
27 agency's proposed use of the funds.

28 (2) In order to qualify for receipt of funds, each law enforcement  
29 agency submitting an application shall provide written evidence  
30 that the agency either:

31 (A) Has a unit, division, or section devoted to the investigation  
32 or prosecution of real estate fraud, or both, and the unit, division,  
33 or section has been in existence for at least one year prior to the  
34 application date.

35 (B) Has on a regular basis, during the three years immediately  
36 preceding the application date, accepted for investigation or  
37 prosecution, or both, and assigned to specific persons employed  
38 by the agency, cases of suspected real estate fraud, and actively  
39 investigated and prosecuted those cases.

1 (3) The committee's determination to award funds to a law  
2 enforcement agency shall be based on, but not be limited to, (A)  
3 the number of real estate fraud cases filed in the prior year; (B)  
4 the number of real estate fraud cases investigated in the prior year;  
5 (C) the number of victims involved in the cases filed; and (D) the  
6 total aggregated monetary loss suffered by victims, including  
7 individuals, associations, institutions, or corporations, as a result  
8 of the real estate fraud cases filed, and those under active  
9 investigation by that law enforcement agency.

10 (4) Each law enforcement agency that, pursuant to this section,  
11 has been awarded funds in the previous year, upon reapplication  
12 for funds to the committee in each successive year, in addition to  
13 any information the committee may require in paragraph (3), shall  
14 be required to submit a detailed accounting of funds received and  
15 expended in the prior year. The accounting shall include (A) the  
16 amount of funds received and expended; (B) the uses to which  
17 those funds were put, including payment of salaries and expenses,  
18 purchase of equipment and supplies, and other expenditures by  
19 type; (C) the number of filed complaints, investigations, arrests,  
20 and convictions that resulted from the expenditure of the funds;  
21 and (D) other relevant information the committee may reasonably  
22 require.

23 (d) The county board of supervisors shall annually review the  
24 effectiveness of the district attorney in deterring, investigating,  
25 and prosecuting real estate fraud crimes based upon information  
26 provided by the district attorney in an annual report. The district  
27 attorney shall submit the annual report to the board on or before  
28 September 1 of each year.

29 (e) A county shall not expend funds held in that county's Real  
30 Estate Fraud Prosecution Trust Fund until the county's  
31 auditor-controller verifies that the county's district attorney has  
32 submitted an annual report for the county's most recent full fiscal  
33 year pursuant to the requirements of subdivision (d).

34 (f) The intent of the Legislature in enacting this section is to  
35 have an impact on real estate fraud involving the largest number  
36 of victims. To the extent possible, an emphasis should be placed  
37 on fraud against individuals whose residences are in danger of, or  
38 are in, foreclosure as defined in subdivision (b) of Section 1695.1  
39 of the Civil Code. Case filing decisions continue to be at the  
40 discretion of the prosecutor.

1 (g) A district attorney's office or a local enforcement agency  
2 that has undertaken investigations and prosecutions that will  
3 continue into a subsequent program year may receive nonexpended  
4 funds from the previous fiscal year subsequent to the annual  
5 submission of information detailing the accounting of funds  
6 received and expended in the prior year.

7 (h) No money collected pursuant to this section shall be  
8 expended to offset a reduction in any other source of funds. Funds  
9 from the Real Estate Fraud Prosecution Trust Fund shall be used  
10 only in connection with criminal investigations or prosecutions  
11 involving recorded real estate documents.